

An Act

ENROLLED SENATE
BILL NO. 544

By: Montgomery of the Senate

and

Tedford and Sneed of the
House

An Act relating to the Perpetual Care Fund Act; amending 36 O.S. 2021, Sections 7106 and 7112, which relate to annual reports and actions to recover monies; requiring owner of certain fund to maintain certain permit; establishing application and renewal process for certain permit; modifying application fee for certain permit; requiring electronic submission and payment; requiring renewal fee prior to reinstatement of certain permit; establishing renewal procedures for expired permit; requiring certain report from expired permit holder; conforming language; requiring certain report and fee payment by certain date; setting maximum for certain fine; and providing an effective date.

SUBJECT: Perpetual care fund

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2021, Section 7106, is amended to read as follows:

Section 7106. A. The No owner of a cemetery maintaining shall maintain a Perpetual Care Trust Fund, or certificate of deposit in lieu of a Perpetual Care Trust Fund, shall be required to pay to the Insurance Commissioner an annual fee of Two Hundred Dollars (\$200.00), and file a report of each cemetery by March 15 of each year with the Commissioner, showing, for the preceding calendar

year: unless the owner has received a permit from the Insurance Commissioner. Initial and renewal permit applications shall be filed electronically in the manner and form prescribed by the Commissioner, along with a two-hundred-dollar application fee and any transaction or other applicable fees. The permit shall expire on March 15 of each calendar year unless it is renewed by the permit holder. A permit expired for failure to submit a renewal application and fee may be reinstated within ninety (90) days after the expiration date by electronically filing a renewal application, paying a fee in an amount that is double the renewal fee, and paying any transaction or other applicable fees in the form and manner prescribed by the Commissioner. The Commissioner shall require a permit holder whose permit has been expired for more than ninety (90) days to reapply as if a new applicant and pay an application fee equal to an amount that is double the renewal fee, in addition to any other fines imposed. Any application received after the permit has been expired for more than ninety (90) days shall include a detailed report of Perpetual Care Trust Fund services provided in this state during the period that the permit was expired.

B. The owner of a cemetery maintaining a Perpetual Care Trust Fund or certificate of deposit in lieu of a Perpetual Care Trust Fund shall, by March 15 of each calendar year, electronically file a report and pay any applicable fees in the manner and form prescribed by the Commissioner. Such report shall show, for the preceding calendar year:

1. The gross amount received from sales of grave spaces, lots, mausoleum crypts and niches;

2. The total purchase price of grave spaces, lots, mausoleum crypts and niches on contracts which received final payment and required deposits to the Perpetual Care Fund during the calendar year;

3. The operating expenses incurred during the calendar year which are eligible to be paid from income of the Perpetual Care Fund;

4. The total amount of the principal of the Perpetual Care Fund as of the beginning of the preceding calendar year; and

5. The amount segregated and deposited in the Perpetual Care Fund as provided by the Perpetual Care Fund Act which, if the Perpetual Care Fund is held in trust, shall be certified by the trustee of the Perpetual Care Fund as to correctness thereof, and the trustee shall provide:

- a. the total amount of the principal of the Perpetual Care Fund as of the end of the calendar year,
- b. the securities and other assets in which such perpetual care funds are invested,
- c. the cash on hand,
- d. a verification in writing of all assets in which monies of the Perpetual Care Fund have been invested; provided, the verification shall be obtained from the holder or holders of the assets,
- e. the income derived from the Perpetual Care Fund investments during the calendar year, and
- f. the gross expenditures or transfers from income of the Perpetual Care Fund during the calendar year.

The annual fee collected pursuant to this subsection shall be deposited in the State Insurance Commissioner Revolving Fund created pursuant to Section 307.3 of this title.

~~B.~~ C. If the Perpetual Care Fund is maintained in a certificate of deposit in lieu of a trust fund, the cemetery shall provide in its annual report a verification from the financial institution as to the amount of principal of the Perpetual Care Fund as of the end of the calendar year, and the amount of funds contributed to the certificate of deposit by the cemetery as of each maturity date of the certificate of deposit during the last calendar year.

~~C.~~ D. The Commissioner shall have authority, at any time, to inspect the books and records of any cemetery, and to make an examination thereof for the purpose of determining if proper sums have been deposited with the trustee in the Perpetual Care Fund, or in a certificate of deposit maintained in lieu of a trust fund, and

if the Fund is being properly administered by the trustee in accordance with the provisions of the Perpetual Care Fund Act and rules of the Commissioner. The examination shall be conducted pursuant to Sections 309.1 through 309.7 of this title and the cost of the examination shall be paid by the cemetery owner. The cost of the examination shall be billed directly to the cemetery owner by the examiner. Each cemetery owner and trustee is responsible for maintaining satisfactory books and records which adequately justify all information contained in the annual report required by this section.

~~D.~~ E. Whenever a cemetery owner and/or trustee refuses to submit the books, records, papers, and instruments of the cemetery to the examination and inspection of the assistants or examiners of the Insurance Commissioner, or refuses or neglects to establish or maintain a Perpetual Care Trust Fund in accordance with the requirements of the Perpetual Care Fund Act within ninety (90) days after a written demand to establish or maintain a Perpetual Care Fund is made by the Commissioner, or in any manner obstructs or interferes with the examination of its cemetery or refuses to be examined on oath concerning any of the affairs of its cemetery, the Commissioner may make application for receivership in the manner of a domestic insurer pursuant to Sections 1901 through 1920 of this title.

SECTION 2. AMENDATORY 36 O.S. 2021, Section 7112, is amended to read as follows:

Section 7112. A. The Insurance Commissioner may initiate an action to recover payments required to be deposited to the State Insurance Commissioner Revolving Fund pursuant to the Perpetual Care Fund Act or to recover other monies received or disbursed in violation of the Perpetual Care Fund Act.

B. The Insurance Commissioner may, after an opportunity for hearing ~~and a determination that an owner of a cemetery is in violation of the Perpetual Care Fund Act,~~ censure an owner of a cemetery, levy a fine as deemed appropriate by the Commissioner not to exceed One Thousand Dollars (\$1,000.00) for each occurrence, or both censure and levy a fine against an owner of a cemetery any combination of the above for violation of any provision of the

Perpetual Care Fund Act or any rules promulgated in accordance with the act.

SECTION 3. This act shall become effective November 1, 2023.

Passed the Senate the 21st day of March, 2023.

Brent Howard
Presiding Officer of the Senate

Passed the House of Representatives the 26th day of April, 2023.

Wayne Luskin
Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 1st
day of May, 20 23, at 2:13 o'clock p. M.
By: Deanne Curry

Approved by the Governor of the State of Oklahoma this 5th
day of May, 20 23, at 10:42 o'clock a. M.

BSA
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 5th
day of May, 20 23, at 11:50 o'clock A. M.
By: Brian Benjamin